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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,703	02/05/2004	William M. Colone	297912002103	5606
25224	7590	07/27/2007	EXAMINER	
MORRISON & FOERSTER, LLP			AUGHENBAUGH, WALTER	
555 WEST FIFTH STREET			ART UNIT	PAPER NUMBER
SUITE 3500			1772	
LOS ANGELES, CA 90013-1024			MAIL DATE	DELIVERY MODE
			07/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/772,703	COLONE, WILLIAM M.
Examiner	Art Unit	
Walter B. Aughenbaugh	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 April 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 42,46,50 and 51 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 42,46,50 and 51 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 20, 2007 (Amdt. C) has been entered.

### ***WITHDRAWN OBJECTIONS***

2. The objection to the specification that was repeated in paragraph 4 of the previous Office Action mailed December 4, 2006 has been withdrawn due to Applicant's amendment in claim 50 in Amdt. C and due to Applicant's cancellation of claims 52 and 53 in Amdt. C.

3. The objection to claim 53 that was repeated in paragraph 5 of the previous Office Action mailed December 4, 2006 has been withdrawn due to Applicant's cancellation of claim 53 in Amdt. C.

### ***WITHDRAWN REJECTIONS***

4. All 35 U.S.C. 112 rejections of record have been withdrawn due to Applicant's arguments in Amdt. C, Applicant's amendments in Amdt. C, and the discussion during the April 19, 2007 interview.

5. The 35 U.S.C. 102 rejection of claims 42 and 50 that were repeated in paragraph 9 of the previous Office Action mailed December 4, 2006 has been withdrawn due to Applicant's arguments in Amdt. C and the discussion during the April 19, 2007 interview.

6. The 35 U.S.C. 103 rejection of claims 46 and 51 that were repeated in paragraph 10 of the previous Office Action mailed December 4, 2006 has been withdrawn due to Applicant's arguments in Amdt. C and the discussion during the April 19, 2007 interview.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 42 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Bosse et al. (USPN 5,321,109) or Bosse et al. (USPN 5,468,138).

In regard to claim 42, Bosse et al. teach a radially expandable tube consisting of extruded expanded polytetrafluoroethylene having a microstructure of nodes interconnected by fibrils, where the tube is pre-dilated (expanded by stretching to a desired dimension) (col. 1, lines 13-20). Bosse et al. teach that the tube is then sintered after pre-dilatation (heated to approximately

375°C). Since the expanded tube will contract back to its pre-expanded shape (col. 1, lines 39-50) if it is not held to its expanded dimensions (col. 1, lines 39-50), the tube disclosed by Bosse et al. will contract back to its pre-expanded shape when it is not held to its expanded dimensions, so the tube disclosed by Bosse et al., upon contraction of the tube, has the claimed radial expansion ratio.

In regard to claim 50, Bosse et al. teaches a highly crystalline (col. 1, lines 44-47) porous polytetrafluoroethylene tube where the tube is pre-dilated (expanded by stretching to a desired dimension) (col. 1, lines 13-20). Bosse et al. teach that the tube is then sintered after pre-dilatation (heated to approximately 375°C). Since the expanded tube will contract back to its pre-expanded shape (col. 1, lines 39-50) if it is not held to its expanded dimensions (col. 1, lines 39-50), the tube disclosed by Bosse et al. will contract back to its pre-expanded shape when it is not held to its expanded dimensions, so the tube disclosed by Bosse et al., upon contraction of the tube, has the claimed radial expansion ratio.

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 46 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosse et al. (USPN 5,321,109) (or Bosse et al., USPN 5,468,138) in view of Marin et al. (US 5,618,300).

Bosse et al. teach the tube as discussed above in regard to claims 42 and 50.

Bosse et al. fail to teach that the tube is attached to an expandable stent.

Marin et al., however, disclose a graft-stent complex comprising an expandable polytetrafluoroethylene graft (item 46) that is sutured (therefore, attached) to a pair of expandable stents (items 48a and 48b) (col. 4, lines 43-65 and Fig. 1). Therefore, one of ordinary skill in the art would have recognized to have attached the pair of expandable stents of Marin et al. to the tube of Bosse et al. and to have used the resulting structure as the graft-stent complex of Marin et al. since it is well known to attach a pair of expandable stents to a expandable polytetrafluoroethylene tube to form a graft-stent complex as taught by Marin et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have attached the pair of expandable stents of Marin et al. to the tube of Bosse et al. and to have used the resulting structure as the graft-stent complex of Marin et al. since it is well known to attach a pair of expandable stents to a expandable polytetrafluoroethylene tube to form a graft-stent complex as taught by Marin et al.

#### *Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-

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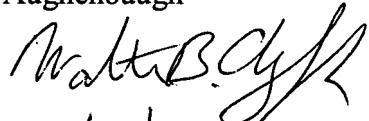
1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh

7/09/07

  
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